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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,073	10/11/2000	David Traynor	F0002-010001	5507
7590		03/29/2004	EXAMINER	
Kristofer E. Elbing		JEANTY, ROMAIN		
187 Pelham Island Road		ART UNIT		
Wayland, MA 01778		PAPER NUMBER		
		3623		
DATE MAILED: 03/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/686,073

Applicant(s)

TRAYNOR ET AL.

Examiner

Romain Jeanty

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 8-15 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-15 and 32-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3, 4</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### **Election/Restriction**

1. Claims 16-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 7. However, the examiner notes that applicant cancelled non-elected claims 16-31. Therefore, applicant's arguments with respect to the restriction requirement are moot. The restriction requirement is final.

2. Claims 1-4, 8-15 and 32-34 are presented for examination.

### ***Specification***

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

4. The disclosure is objected to because of the following informalities: The copending United States Patent application number is missing on page 1. Applicant is requested to submit the number for the copending application. Appropriate correction is required.

Page 2, line 25, it appears that "derives" should be --derive--.

### ***Claim Objections***

5. Claim 2 is objected to because of the following informalities: The claim needs to end with a period. It is suggested that a period be put after screen. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitations “the present price and future price”. It is unclear as to what present and future price applicant is referring. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4 and 8-15 are rejected under 35 U.S.C. 102(b) as being anticipated over Godin et al (U.S. Patent No. 5,890,138).

As per claim 1, Godin et al disclose a computer auction system comprising:

presenting via a first network a plurality of prices to a user for an item on a sales screen

Art Unit: 3623

(a network for displaying item information to users) (col. 3, lines 20-29, lines 48-50).

Converting available supply “quantity” and sales activity level information about actions by other users for the item for which the price choices are presented in the step of presenting into a feedback indication, conveying “providing” the feedback information to the user on the sales screen (col. 2, lines 1-64, lines).

As per claim 2, Godin et al further disclose wherein the step of conveying includes displaying the feedback indication in the sales screen (col. 2, lines 1-8).

As per claim 3, Godin et al disclose wherein the step of conveying includes displaying the feedback indication in the form of one of a series of different pictorial icons (i.e. providing the product image of the product (col. 5, lines 41-51).

As per claim 4, further discloses from claim 1 wherein more factors selected from a group including quantities of the item sold, quantities of the item reserved at future price points, quantities of the item for which a reminder request has been entered, and the time duration incurred to sell the item (col. 3, lines 44-47).

As per claim 8, Godin et al further disclose wherein the converting is performed continuously in near real time (col. 3, lines 65-66).

As per claim 9, Godin et al further disclose wherein the presenting presents time-separated price choices from a falling-price schedule (col. 6, lines 50-56).

As per claim 10, Godin et al further disclose wherein the presenting a plurality of price choices displays a present price and at least one future price, and further including a displaying a

Art Unit: 3623

present purchase control button next to the present and future price purchase control button next to the future price (col. 3, lines 48-53).

As per claim 11, Godin et al disclose an item identification area responsive to a sales server via a network (server 22 having product information to be auctioned) (col. 3, lines 22-30), a plurality of price choices selection controls for the item identified in the item identification area and having outputs provided to the sales server via the network, and a feedback indication area responsive to the sales server via the network and operative to display a feedback indication derived from a quantity of the item available and sales of the item through other sales terminals (col. 2, lines 1-14; col. 3, lines 22-60).

As per claim 12, Godin et al disclose wherein the step of conveying includes displaying the feedback indication in the form of one of a series of different pictorial icons (i.e. providing the product image of the product (col. 5, lines 41-51).

As per claim 13, Godin et al further disclose wherein the converting is performed continuously in near real time (col. 3, lines 65-66).

As per claim 14, Godin et al further disclose wherein the presenting presents time-separated price choices from a falling-price schedule (col. 6, lines 50-56).

Claim 15 is a network sales system for performing the steps of network sales method of claim 1; therefore is rejected under the same rationale.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3623

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godin et al (U.S. Patent No. 5,890,138) in view of Fisher et al (U.S. Patent No. 6,243,691).

As per claims 32-34, Godin et al disclose all of the limitations in claim 1 above, but fail to disclose adjusting one or more of the plurality of price choices. Fisher et al, in the same field of endeavor, discloses the idea of making price adjustments (col. 8, lines 13-38). It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to have modified the disclosures of Godin et al to include a price adjustment as evidenced by Fisher et al with the motivation to allow large number of items to be continuously auctioned.

### **Conclusion**

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Walker et al (U.S. Patent No. 6,052,667) disclose a method for selling product.
- b. Burke (U.S. Patent No. 6,304,855) discloses a system which allows a consumer to purchase products at home.
- c. Ojha et al (U.S. Patent No. 6,598,026) disclose facilitation of transaction between buyers and sellers on the world-wide-web which includes a list of price for products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached Monday-Thursday from 7:30 am to 6:00 pm. If attempts to

Art Unit: 3623

reach the examiner are not successful, the examiner's supervisor, Tariq R Hafiz can be reached at (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

or faxed to: (703) 305-7687

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington VA, Seventh floor receptionist.



Romain Jeanty

Primary Examiner

Art Unit 3623

March 21, 2004